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IN THE SUPERIOR COURT OF STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

v.

STEVEN CARROLL DEMOCKER,

Defendant.

Cause No. P1300CR20081339

Division 6

STATE'S RESPONSE TO DEFENDANT'S  
MOTION TO PRECLUDE LATE  
DISCLOSED WITNESSES, EVIDENCE,  
EXPERTS AND OPINIONS FROM THE  
STATE'S 55-57<sup>TH</sup> & EARLIER  
DISCLOSURES FILED APRIL 13, 2010

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, hereby submits its Response to Defendant's Motion to Preclude Late Disclosed Evidence, Reconstruction and Opinions from the State's 55-57<sup>th</sup> Supplemental Disclosures filed April 13, 2010, and asks that the Motion be denied. The State's position is supported by the attached Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

Yet again, Defendant's Motion is little more than a restatement of all the other motions to preclude or exclude witnesses and evidence that have been filed in this case. And as the State has acknowledged on numerous occasion, as required by Rule 15.6, the State has continued to make seasonal disclosure of new or different information in this case. Additional review, additional testing and requests for additional information is necessary in order to

1 ensure that every possible avenue has been explored in the State's attempt to resolve all issues.  
2 Also, it must be noted that the defense has also committed disclosure violations. In just the  
3 past few days new experts have been added without C.V., reports or any additional  
4 documentation.

5 ***I. Stutchman Forensics.***

6 Stutchman Forensics was enlisted to attempt to enhance some of the shoe impression  
7 photographs taken at the scene. Comparisons were made which show numerous similarities  
8 between the enhanced shoe impressions and the sole of the La Sportiva shoe. Mr. Gilkerson  
9 has not relied upon the enhanced photographs to make his comparisons or form his opinion.

10 ***II. Photo Disk WW and the Report from Eric Gilkerson.***

11 Disk WW contains photographs of the La Sportiva shoes which have been provided to  
12 Defendant for expert comparison. Although Mr. Gilkerson may have seen these photographs,  
13 the FBI laboratory has produced its own photographs which were disclosed in the State's 63<sup>rd</sup>  
14 Supplement dated April 26, 2010. See Bates 25276-25285. The latest report from Mr.  
15 Gilkerson is simply a continuation of his examination. This Court previously ruled that the  
16 shoe evidence would not be precluded.

17 ***III. Forensic Consulting Solutions.***

18 The curriculum vitae of Lynita D. Hinsch, a forensic examiner from Forensic  
19 Consulting Solutions, was disclosed to the defense on February 18, 2010, in the State's 47<sup>th</sup>  
20 Supp. See Bates 18235-18238. Her name was inadvertently omitted from the expert witnesses  
21 included in that supplement. While the State admits error by failing to list this witness as an  
22 expert at that time, her name should not come as a surprise to the defense since they have been  
23 in possession of her CV for some months. Her testimony is related to a search of Defendant's  
24  
25  
26

1 computer documents for files or internet search history which may have remained hidden from  
2 the original forensic examinations by the Anonymizer© software.<sup>1</sup> If there are more instances  
3 where Defendant conducted searches regarding how to kill someone, the inculpatory  
4 information would be pivotal in proving the premeditation aspect of the crime. The analysis  
5 is on-going and whether Ms. Hinsch discovers any material evidence remains to be seen;  
6 however, preclusion should not be considered until such time as the analysis is complete and if  
7 the evidence is inculpatory, the compelling evidence should not be precluded.  
8

9 Rule 15.7 of the Arizona Rules of Criminal Procedure  
10 authorize the trial court to sanction a party who does not timely  
11 disclose material relevant to the case. *If a sanction is*  
12 *warranted, it should have minimal effect on the evidence and*  
13 *the merits of the case. Precluding evidence is rarely the*  
14 *appropriate sanction.*

15 *State v. Towery*, 186 Ariz. 168, 186, 920 P.2d 290, 308 (1996) (emphasis added).

16 **IV. Log In/Log Out times for UBS computer.**

17 The State has disclosed over 25,000 documents in this case. As with any case this size,  
18 simple documents will be accidentally overlooked. Such is the case with this log in/log out  
19 sheet. The information on this document tends to support Defendant's statement of when he  
20 left work on July 2, 2008. Given that the information is not prejudicial and, in fact, verifies  
21 Defendant's account, preclusion is not warranted.

22 **V. Dan Jensen.**

23 Dan Jensen is a custodian of records from Sprint. His testimony is related to the Sprint  
24 records of James Knapp and became relevant after the Defense noticed Third Party Culpability  
25 as a defense on April 10, 2010. Furthermore, Mr. Jensen will testify as to the manner in which  
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<sup>1</sup> An anonymizer or an anonymous proxy is a tool that attempts to make activity on the Internet untraceable.

1 Sprint cell towers are configured, the capabilities of the Sprint cell phone network and the  
2 manner in which Sprint keeps track of time logged on Sprint cell phones. He is also qualified to  
3 testify about coverage maps of Sprint cell phone towers. His testimony is highly relevant to the  
4 issue of James Knapp's alibi and alleged culpability by the Defense.

5 ***VI. Dr. Steven Pitt.***

6 Dr. Steven Pitt is a rebuttal witness for the State that will testify based upon testimony  
7 by witnesses for the Defense in the penalty stage, in the event Defendant is convicted and a  
8 death penalty aggravator. The precise subject matter of his testimony is unknown at this point  
9 because he is a rebuttal witness and this case is far from reaching the point where his testimony  
10 will become relevant. However, in a general sense he is a Forensic Psychiatrist and will testify  
11 concerning Defendant's state of mind given the evidence adduced at trial as well as factors that  
12 would precipitate the conduct that is proved at trial.

13 ***VII. Divorce Record from 2006.***

14 Defendant is fully aware of these documents as he filed the original petition for  
15 dissolution of marriage and the subsequent request to dismiss under P1300DO20060521. Out  
16 of an abundance of caution, the State included these documents in its disclosure. As Defendant  
17 has failed to show any prejudice from these documents, preclusion is not warranted.

18 ***VIII. American Express Records.***

19 In the April 8<sup>th</sup> Minute Entry, the Court stated that sanctions are not appropriate with  
20 regard to obtaining bank records. As the State has mentioned on numerous occasions, multiple  
21 subpoenas have been necessary to obtain complete financial records. These records should not  
22 be precluded.

1 **IX. Photo Disk YY.**

2 These are photographs of the Prescott home Defendant rented after Carol's murder and  
3 from which the purchase of several books on how to disappear was made. These photos  
4 show the instructions on how to use the internet, which Defendant admitted using in order to  
5 purchase the books on how to disappear when he was planning on fleeing. Defendant is fully  
6 aware of these internet instructions as well as the appearance of the rental. In an abundance of  
7 caution, the State disclosed the photos from the rental property in the event Defendant  
8 challenges the purchase of the books.

10 **X. Late Disclosed Witnesses.**

11 As the Court is aware, this is a complex case largely dependent upon circumstantial  
12 evidence. The State began with well over 200 witnesses and pared the list significantly.  
13 Despite all the best efforts, new witnesses have continued to come to light. This should not be  
14 unexpected in a case involving dozens of scientific reports from multiple laboratories as well as  
15 dozens of subpoena returns from numerous financial institutions. The Court should not be  
16 swayed by Defendant's incessant and unrelenting complaints of "late" disclosure. While  
17 disclosure within the last weeks before trial is never encouraged, the fact that it occurs is a  
18 constant in criminal litigation. The recently disclosed witnesses should not be precluded

20 **CONCLUSION:**

21 As the State responds to this motion, we are just seven days from trial. The State has  
22 recently discovered a dry bag and cell phone found near Defendant's Alpine Meadows  
23 residence which Defendant had in hidden in preparation for his escape. New evidence  
24 concerning this discovery will be forthcoming and additional witnesses may be added. The  
25 State respectfully requests that the Court deny Defendant's Motion to Preclude Late Disclosed  
26

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1 Witnesses, Evidence, Experts and Opinions from the State's 55-57<sup>th</sup> and Earlier Disclosures  
2 filed April 13, 2010.

3 RESPECTFULLY SUBMITTED this 28<sup>th</sup> day of April, 2010.  
4

5 Sheila Sullivan Polk  
6 YAVAPAI COUNTY ATTORNEY

7  
8 By: 

9 Joseph C. Butner  
10 Deputy County Attorney

11 COPIES of the foregoing delivered this  
12 28<sup>th</sup> day of April, 2010 to:

13 Honorable Thomas J. Lindberg  
14 Division 6  
15 Yavapai County Superior Court  
(via email)

16 John Sears  
17 107 North Cortez Street, Suite 104  
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19 Larry Hammond  
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23 By: Web Cornell  
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